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Elizabeth A. Brown
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IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Appellant,

vs.

AMERICAN BROADCASTING
COMPANIES, INC.; THE ASSOCIATED
PRESS; CABLE NEWS NETWORK, INC.;
CHESAPEAKE MEDIA I, LLC, D/B/A
KSNV-TV; LOS ANGELES TIMES
COMMUNICATIONS, LLC; THE NEW
YORK TIMES COMPANY; SCRIPPS
BROADCASTING HOLDINGS LLC
D/B/A KTNV-TV; WP COMPANY LLC
D/B/A THE WASHINGTON POST AND
LAS VEGAS REVIEW-JOURNAL,

Respondents.

Case No.: 75518

APPELLANT'S RESPONSE TO
RESPONDENT LAS VEGAS
REVIEW JOURNAL'S
UNTIMELY MOTION FOR AN
EXTENSION OF TIME TO FILE
REPLY BRIEF ON CROSS-
APPEAL

Appeal from the Eighth Judicial
District Court, the Honorable Tierra
Jones Presiding

MAC:14687-102 3719965_1

I. INTRODUCTION

Nearly a month after the Las Vegas Metropolitan Police Department submitted its reply and answering brief, and two weeks after the Las Vegas Review-Journal's ("LVRJ") deadline to file its reply brief on cross-appeal, LVRJ seeks an extension to submit its brief. In support of its position, LVRJ claims that it "miscalendared" the deadline under NRAP 31(a)(1)(C) for 30 days, rather than calendaring the appropriate 14-day deadline under NRAP 28.1(f)(1)(D). Mere inadvertence, however, is insufficient to meet the good cause standard of NRAP 26(b)(1)(A). Accordingly, LVMPD asks that this Court deny LVRJ's request.

II. LEGAL ARGUMENT

LVRJ acknowledges that the initial deadline for its reply brief on cross-appeal was due April 5, 2019. *See* Mot. at 3. The motion, however, is unclear on what specific date LVRJ requests the deadline be extended. LVRJ contends that, due to the excusable neglect of Ms. McLetchie, it should have until April 25, 2019 to submit its reply brief. *Id.* Then, LVRJ seeks additional time, until May 6, 2019, to file a reply brief. Because LVRJ's brief is already untimely, no additional extensions should be given.

Ms. McLetchie admits that the untimely motion and reply brief were a result of calendaring the wrong deadline. Specifically, Ms. McLetchie claims that she

“miscalendared” the deadline under NRAP 31(a)(1)(C) for 30 days, rather than calendaring the appropriate 14-day deadline under NRAP 28.1(f)(1)(D). NRAP 26 permits a court to extend the time prescribed by a Rule after that time has expired upon good cause. NRAP 26(b)(1)(A).

LVRJ applies an excusable neglect standard instead of the proper good cause standard. This Court has previously determined that these two standards are distinct. *Moseley v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 124 Nev. 654, 668, n. 66, 188 P.3d 1136, 1146 (2008). “Good cause generally is established when it is shown that the circumstances causing the failure to act are beyond the individual’s control.” *Id.* (citing *State v. Williams*, 120 Nev. 473, 477, 93 P.3d 1258, 1260 (2004)). An attorney’s inadvertence or miscalculation does not meet the good cause standard. *Pioneer Investment Services v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 392 (1993) (“inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute excusable neglect” in bankruptcy context); *United States v. Torres*, 372 F.3d 1159, 1160 (10th Cir. 2004) (applying *Pioneer Investment Services* in Rule 4(b) context); *United States v. Alvarez-Martinez*, 286 F.3d 470, 473 (7th Cir. 2002) (miscalculation does not amount to good cause under Fed.R.App.4(b)(4)); *Virella-Nieves v. Briggs &*

Stratton Corp., 53 F.3d 451, 454 n.3 (1st Cir. 1995); *United States v. Clark*, 51 F.3d 42, 43 (5th Cir. 1995) (“a failure to understand and comply with the rules governing appeals will virtually never qualify as excusable neglect”); *United States v. Hooper*, 9 F.3d 257, 259 (2d Cir. 1993) (“excusable neglect will not be found where the failure to file a timely appeal is caused by palpable oversight, administrative or clerical errors by the attorney or the attorney's staff, or by an attorney's busy schedule.”); *see also Lawrence v. Florida*, 549 U.S. ___, 127 S.Ct. 1079, 1085 (2007) (finding attorney error in calculating filing deadline does not equitably toll limitations period for filing of federal habeas petition).

In this case, the Court is not confronted, for example, with evidence of an honest misconstruction of an ambiguous procedural rule, but rather with an inexcusable failure to act in a timely manner. LVRJ’s explanation that it simply “miscalendared” the deadline for the reply brief on cross-appeal clearly constitutes an admission of neglect. However, inadvertence, without more, is not an excuse. Accordingly, LVRJ’s motion must be denied.

III. CONCLUSION

Based on the foregoing, LVMPD requests that this Court deny LVRJ's Untimely Motion for Extension of Time to File Reply Brief on Cross-Appeal.

Dated this 25th day of April, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT'S RESPONSE TO
RESPONDENT LAS VEGAS REVIEW-JOURNAL'S UNTIMELY
MOTION OF TIME TO FILE REPLY BRIEF ON CROSS-APPEAL** was
filed electronically with the Nevada Supreme Court on the 25th day of April, 2019.
Electronic Service of the foregoing document shall be made in accordance with the
Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and
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/s/ Leah Dell

An employee of Marquis Aurbach Coffing